

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

101 WEST LOMBARD STREET
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April 9, 2004

Dear Counsel:

The purposes of this letter are (1) to notify you of the “family of fund” cases Judge Blake, Judge Davis, Judge Stamp, and I respectively will be handling, (2) to notify you that the tracks have been opened and that you may begin to make electronic filings after having entered your appearance in them, (3) to advise you of certain changes we have made in establishing the tracks, (4) to provide instructions you should follow in entering your appearances in the tracks until the new (or amended) consolidated complaints are filed, and (5) to provide other instructions concerning the filing of new or amended consolidated complaints.

FAMILY OF FUND ASSIGNMENTS

JUDGE BLAKE	JUDGE DAVIS	JUDGE MOTZ	JUDGE STAMP
<i>04-md-15861</i>	<i>04-md-15862</i>	<i>04-md-15863</i>	<i>04-md-15864</i>
Excelsior	Artisan	Alger	AIM
Federated	Franklin Templeton	Columbia	Alliance
Scudder	Pilgrim Baxter	Janus	INVESCO
	Strong	MPS	Nationsbank
		One Group	T. Rowe Price
		Putnam	

As new MDL-1586 cases involving additional families of funds are transferred to Maryland, we will decide to whom they should be assigned.

CHANGES IN TRACKS

We have previously advised you we would establish separate tracks for each family of funds. We have now decided to establish only four tracks, grouped by judge. Each track will contain

subtracks for each different family of funds, and the subtracks will contain sub-subtracks for each different type of claim asserted as to each family of funds, e.g., investor claims, fund derivative claims, and parent derivative claims. You should identify the track, subtrack, and sub-subtrack in which you are filing a particular document in the caption and in the docket entry.¹

We recognize that this change in the track system will result in more CM/ECF “hits” in your email boxes. However, we think this disadvantage is substantially outweighed by several factors. First, we have concluded that many, perhaps most, of you will want to be notified of all filings made in cases pending before the judge presiding over your case(s). Second, omnibus motions will only have to be filed four times instead of eighteen (or more) times. Third, the establishment of only four tracks will be of great convenience for counsel for defendants named in cases brought against different families of funds, e.g., the Canary defendants. Fourth, fewer tracks may result in fewer filing errors.

Because there will now be only four tracks, we will also be able to use the numbering system we originally contemplated. We believe that numbering system to be preferable because it ties the tracks to MDL 1586. As indicated on the chart in the first part of this letter, the numbers will be as follows:

04-md-15861 (for the funds assigned to Judge Blake)

04-md-15862 (for the funds assigned to Judge Davis)

04-md-15863 (for the funds assigned to Judge Motz)

04-md-15864 (for the funds assigned to Judge Stamp)

INTERIM INSTRUCTIONS FOR FILING DOCUMENTS IN TRACKS

Counsel may file and docket a document in the CM/ECF system only if they identify the party they are representing. Until the new (or amended) consolidated complaints are filed, there will be no “parties” whose names are entered in the four tracks. This presents a problem we did not anticipate: how are you to file documents and communicate with us and one another through the CM/ECF system before the consolidated complaints are filed?

To solve this problem, we are creating two fictional parties in each track: “A Plaintiff” and “A Defendant.” Any of you who want to receive electronic notification and/or to file documents must first file a notice of appearance. In the body of the notice, please list the specific party or parties you

¹This instruction about identifying track, subtrack, and sub-subtrack applies only after consolidated complaints have been filed, not during the interim period discussed in the next section of this letter.

represent. When filing the notice, you will be prompted to select a filer. Choose either “A Plaintiff” or “A Defendant.” On the next screen, be sure to check the box to create the attorney/party association.

Thereafter, if you want to file a document on behalf of a plaintiff or a defendant in one or more tracks, you should (when prompted to do so) again select either “A Plaintiff” or “A Defendant.”² Then, in order to make the record clearer and more complete, when you make the docket entry describing the document you are filing, you should “free-text” in the name of the person or entity you actually represent. In that regard, although the system permits you to add “free text” descriptions when making docket entries for most documents, including motions and correspondence, it does not permit you to do so in connection with other documents, such as notices (including notices of appearance). Therefore, you should include in the body of any document you file the identity of the party you are representing.

When the new or amended consolidated complaints are eventually filed in a track, you will have to reenter your appearance for the client you actually represent. In order to prevent confusion and duplication, after we have given you reasonable time to enter your appearances for your actual clients, we will terminate the fictional parties, “A Plaintiff” and “A Defendant.” As stated, the only purpose of these fictional parties is to enable you to make electronic filings during the interim period before the new or amended consolidated complaints are filed.

INSTRUCTIONS FOR FILING NEW OR AMENDED CONSOLIDATED COMPLAINTS

If plaintiffs decide (after appropriate consultation among themselves and with defense counsel) to file new consolidated complaints in Maryland, the complaints should be filed as new civil actions.³ The cases will be given civil action numbers, and pursuant to orders we will sign, the consolidated complaints will be transferred by the clerk’s office to the MDL track to which they relate. All subsequent documents will be filed only in the MDL track.

In contrast, if (instead of filing new complaints in Maryland) plaintiffs decide to file consolidated amended complaints in actions that have been transferred to Maryland, each of the amended complaints should be filed both in the individual action in which plaintiffs have chosen to pursue them and in the MDL track to which they relate. Again, all subsequent documents will be filed only in the MDL track.

One final complexity has occurred to us. We assume that if (contrary to our hopes) plaintiffs file consolidated amended complaints in transferred actions rather than new consolidated actions in

²We ask that before filing a document, you check to make sure you are filing it in the correct track. The names of the families of funds in each track are listed in the title of the track. For example, 04-md-15861 is titled “*In re Excelsior, Federated, and Scudder.*”

³Incidentally, if new consolidated actions are filed in Maryland, we will waive the filing fee.

Maryland, the consolidated amended complaints will be limited to claims arising from the activities of a single family of funds.⁴ (Likewise, we assume that new consolidated complaints filed in Maryland will be limited to claims arising from the activities of a single family of funds.) For example, if plaintiffs decide to file a consolidated amended complaint in a transferred action that originally asserted claims against both Janus and Strong defendants, the consolidated amended complaint will assert claims only against one of those groups of defendants. The claims against the other group will be asserted in an amended consolidated complaint in another action. If we are incorrect in this assumption, we need to be so advised before consolidated amended complaints are filed. Obviously, the inclusion of defendants from different tracks in a consolidated complaint would undermine the track system we are establishing. For example, a consolidated complaint cannot, consistent with our system, name both Federated defendants and Franklin Templeton defendants, because Judge Blake will be handling the Federated cases and Judge Davis will be handling the Franklin Templeton cases.

Finally, we apologize for our delay in establishing the tracks and placing this letter on the website. We encountered both practical and conceptual difficulties as we began to implement our decisions, and we concluded that we should not proceed until we had devised a plan and procedures for overcoming those difficulties.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge

cc: Honorable Catherine C. Blake
Honorable Andre M. Davis
Honorable Frederick P. Stamp, Jr.

⁴That is not to say we assume that unrelated third parties against whom plaintiffs are asserting claims, e.g., the Canary defendants, will be named in only one consolidated amended complaint (or, indeed, only one new consolidated complaint if plaintiffs decide to file consolidated complaints in Maryland). We understand that such parties will be named as defendants in all consolidated complaints (amended or new) asserting claims arising out of the activities of each family of funds in regard to which the third parties are alleged to have committed wrongdoing.

